



May 20, 2002

VIA INTERNET FILING AND FAX

U.S. Department of Transportation
DOT Docket Management Facility, Room PL-401
400 Seventh Street, SW
Washington, DC 20590

FMCSA-2001-11060-19

RE: Docket No. FMCSA-2001-11060; Docket No. FMCSA-01-10886; Docket No. NHTSA-02-11594; Docket No. NHTSA-02-11592; Docket No. NHTSA-02-11593

Dear Sir or Madam:

The Transportation Trades Department, AFL-CIO (TTD), submits the following comments in response to the Federal Motor Carrier Safety Administration (FMCSA) and National Highway Traffic Safety Administration (NHTSA) request for comments on the above entitled five proceedings regarding procedures to ensure the safe implementation of the cross-border transportation provisions of the North America Free Trade Agreement (NAFTA).¹ Because these five rulemakings are so intertwined, we are largely dealing with them in a combined fashion.

TTD, its 34 affiliated unions² and the millions of transportation workers that are represented by these unions have long been concerned about the highway safety issues raised by NAFTA, and we appreciate the opportunity to share our views on these rulemakings. We would note that two TTD member unions, the International Brotherhood of Teamsters (IBT) and the Amalgamated Transit Union (ATU), have submitted comments, with which TTD concurs.

¹ Docket No. FMCSA-2001-11060, Certification of Safety Auditors, Safety Investigators, and Safety Inspectors, 67 Fed. Reg. 12776 (March 19, 2002); Docket No. FMCSA-01-10886, Parts and Accessories Necessary for Safe Operation; Certification of Compliance with Federal Motor Vehicle Safety Standards, 67 Fed. Reg. 12782 (March 19, 2002); Docket No. NHTSA 02-11594, Retroactive Certification of Commercial Vehicles by Motor Vehicle Manufacturers, 67 Fed. Reg. 12790 (March 19, 2002); Docket No. NHTSA 02-11592 Record Keeping and Record Retention 67 Fed. Reg. 12800 (March 19, 2002); Docket No. NHTSA 02-11593, Importation of Commercial Motor Vehicles 67 Fed. Reg. 12806 (March 19, 2002).

² Attached at 1 is a complete list of TTD affiliated unions.

Transportation Trades Department, AFL-CIO

888 16th Street, NW • Suite 650 • Washington, DC 20006 • tel: 202.628.9262 • fax: 202.628.0391 • www.ttd.org
Sonny Hall, President • Patricia Friend, Secretary-Treasurer • Edward Wytkind, Executive Director



TTD supports many of the revisions made by FMCSA and NHTSA to the application and authorization process for Mexico-domiciled carriers seeking to operate in the United States. As these two agencies go forward in implementing these rules, we believe it is crucial that this process ensure that these carriers are operating in full compliance with all U.S. commercial motor vehicle safety laws, including the Federal Motor Carrier Safety Regulations (FMCSRs) and the Federal Motor Vehicle Safety Standards (FMVSSs), as well as Congressional mandates contained in the Murray-Shelby safety provisions in the 2002 DOT Appropriations Act. In order to ensure full compliance, however, the process can be improved in several ways.

FEDERAL MOTOR VEHICLE SAFETY STANDARDS (FMVSS)

Transportation labor fully supports the proposals by FMCSA and NHTSA to require all commercial motor vehicles operating in the U.S. to comply with the FMVSSs and to be affixed with a certification of compliance with the FMVSSs. We urge these agencies to accomplish this goal by requiring a sticker or plate certifying compliance with the FMVSSs before vehicles are allowed to operate in the U.S.

However, we do not support the proposal that vehicles operated in the United States by Canadian or Mexican based carriers prior to the effective date of the rule be given a 24 month grace period to bring their vehicles into compliance with this rule. By providing this grace period, our government would be creating a loophole that would weaken safety. For example, as detailed by the comments filed by ATU, the vast majority of Mexican-manufactured buses did not comply with the FMVSSs when they were manufactured and do not comply with these standards now. Specifically, these buses do not comply with the standards for fundamental safety items such as brakes, fuel systems, windows and emergency exits. With respect to Mexican trucks, it is our understanding that the grace period is intended to apply primarily to those trucks that have operated exclusively in the commercial border zones since, and with few other exceptions, those are the only Mexican trucks that have been permitted to operate in the U.S.

We believe the proposed grace period makes no sense. Simply because a vehicle has previously been operated in the U.S. is no reason to believe that it meets federal safety standards. We cannot put the American traveling public, including our members, at risk by allowing these vehicles to continue operating on U.S. roads for the next two years without first demonstrating compliance with U.S. safety requirements. These vehicles should be treated the same as any other motor vehicle operating on U.S. highways. To do otherwise creates a weaker standard that would have the consequence of exempting any number of Mexican domiciled carriers operating throughout the U.S. from certifying compliance with the FMVSSs for a potentially extended period of time. For these reasons, the border must remain closed until the FMCSA and NHTSA rulemakings are complete and compliance with manufacturing safety standards for all Mexican motor carriers operating beyond the commercial border zones can be ensured.

If, over our objections, the final rule grants a grace period, we believe that the time for allowing certification should be reduced to a more reasonable period of six months. This should allow plenty of time for the carriers to either retroactively certify their current fleet or arrange for substitute vehicles without major disruption to their operations. Furthermore, this certification should only occur where a carrier can present clearly documented proof that a particular vehicle has operated in the U.S. In that case, a waiver should be granted solely to that vehicle and affixed to or carried on the vehicle at all times while operating in the U.S. during the two year period.

CERTIFICATION AND TRAINING OF SAFETY AUDITORS

Last year, the Congress adopted the Murray-Shelby safety provisions in the 2002 DOT Appropriations Act mandating that DOT implement measures to improve training and provide for certification of motor carrier safety auditors.³ Unfortunately, FMCSA has not met the obligations imposed by Congress in its interim final rule on certification and training (FMCSA Docket No. 11060).

First, the FMCSA must provide detailed regulatory guidelines for the certification and training process for safety auditors, investigators and inspectors. As currently written, FMCSA's proposal is vague and does not contain any substance or guidelines for the certification and training process. For example, under Murray-Shelby, DOT is explicitly required to "improve training."⁴ Unfortunately, training requirements are not even addressed in the rulemaking. Rather the rulemaking simply includes a reference to "detailed" training requirements maintained on the FMCSA website.⁵ While we recognize that the FMCSA needs flexibility to allow for constant updating of the training and examination criteria there are certain elements that should be explicitly regulated in guidelines, including the duration and frequency of training and examinations and the general topic areas to be covered.

We also recommend that only government employees should be certified to perform safety audits and compliance reviews. The FMCSA requested comment on "the advisability of certifying non-government employees that meet all training and experience criteria to conduct safety [audits]."⁶ The final rules should make it clear that private contractors may not conduct safety audits and compliance reviews or engage in any other inspection activities that involve the issuance of ratings or the granting of operating authority. This is necessary in order to ensure effective oversight and uniformity of the safety audits and compliance reviews, as well as to prevent conflicts of interest.

³Pub. Law 107-87 at § 350 (a)(10)(B) (Dec. 18, 2001).

⁴Pub. Law 108-87 at § 350 (a)(10)(B).

⁵See § 385.203(a), 67 Fed. Reg. 12779.

⁶67 Fed. Reg. 12777.

RETROACTIVE CERTIFICATION OF COMMERCIAL VEHICLES

In order to assist foreign-domiciled motor carriers in complying with the certification requirement for vehicles currently in their fleets, NHTSA has issued a proposed policy statement (NHTSA Docket No. 02-11594) regarding retroactive certification of vehicles. The proposed policy statement would allow manufacturers retroactively to issue certification labels for any vehicle that complied with the FMVSSs at the time of manufacture, but did not have a label affixed because it was not being sold for use in the United States.

We urge NHTSA to revise this policy statement to ensure that if there is any uncertainty, or the manufacturer does not maintain sufficient production records to determine whether a particular vehicle was produced in accordance with the FMVSSs, then the vehicle should not be certified. Moreover, as we have already indicated, any grace period for allowing carriers to operate in the U.S. should either be rejected or at a minimum reduced to a more reasonable six month period of time. Finally, we believe if a vehicle was not manufactured to conform with the FMVSSs at the time it was manufactured then it is a noncomplying vehicle, and should be imported and brought into compliance by a registered importer subject to the requirements of federal law.⁷

IMPORTATION OF COMMERCIAL MOTOR VEHICLES

In another rulemaking, (NHTSA Docket No. 02-11593) NHTSA codifies its longstanding policy that foreign domiciled commercial motor vehicles operating in the U.S. are considered "imports" and, therefore, must comply with U.S. Federal Motor Vehicle Safety Standards (FMVSSs). Since 1975, NHTSA has taken the position that commercial motor vehicles temporarily entering the U.S. to conduct business are considered imports for purposes of the National Traffic and Motor Vehicle Safety Act. As imports, such vehicles may only operate in the United States if they were manufactured in compliance with the Federal Motor Vehicle Safety Standards (FMVSSs). This proposed rule codifies NHTSA's longstanding position by revising the regulations to define import and to indicate that a purpose of the regulations is to ensure that foreign-domiciled commercial motor vehicles operated in the United States were manufactured in accordance with the applicable FMVSSs. TTD supports NHTSA's longstanding interpretation and its codification of that policy. We strongly believe that ensuring all commercial motor vehicles operating on U.S. highways were manufactured in accordance with applicable FMVSSs is essential to ensuring the safety of our roadways.

CONCLUSION

In closing, we again emphasize the unyielding commitment of transportation labor to the safety and well-being of the traveling public. We appreciate the efforts of the FMCSA and NHTSA in addressing some of the concerns expressed in our earlier comments on this matter. Unfortunately, despite the best efforts of DOT, FMCSA and NHTSA, we remain concerned that the U.S. is not

⁷ See 49 CFR Part 593.

prepared to step up to the myriad inspection and enforcement duties associated with permitting Mexican commercial traffic on our highways. For those reasons, we believe it would be irresponsible for our government to expose U.S. highway users, including truck and bus drivers, to the safety threats posed by giving Mexican-domiciled carriers uninhibited access onto U.S. highways.

We urge you to delay the effective date of these rulemakings and work with TTD and our affiliated unions including the International Brotherhood of Teamsters and Amalgamated Transit Union to keep our southern border closed to unsafe foreign motor carrier traffic.

Thank you for allowing us this opportunity to share our views.

Sincerely,

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the bottom.

Edward Wykind
Executive Director



TTD AFFILIATES

The following labor organizations are members of and represented by the TTD:

*Air Line Pilots Association
Amalgamated Transit Union
American Federation of State, County and Municipal Employees
American Federation of Teachers
Association of Flight Attendants
American Train Dispatchers Department
Brotherhood of Locomotive Engineers
Brotherhood of Maintenance of Way Employes
Brotherhood of Railroad Signalmen
Communications Workers of America
Hotel Employees and Restaurant Employees Union
International Association of Fire Fighters
International Association of Machinists and Aerospace Workers
International Brotherhood of Boilermakers, Blacksmiths, Forgers and Helpers
International Brotherhood of Electrical Workers
International Brotherhood of Teamsters
International Longshoremen's Association
International Longshore and Warehouse Union
International Organization of Masters, Mates & Pilots, ILA
International Union of Operating Engineers
Laborers' International Union of North America
Marine Engineers Beneficial Association
National Air Traffic Controllers Association
National Association of Letter Carriers
National Federation of Public and Private Employees
Office and Professional Employees International Union
Professional Airways Systems Specialists
Retail, Wholesale and Department Store Union
Service Employees International Union
Sheet Metal Workers International Association
Transportation • Communications International Union
Transport Workers Union of America
United Mine Workers of America
United Steelworkers of America*

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